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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,445	01/07/2002	Eric C. Martin	WO-370.009	4916

7590

08/23/2005

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EXAMINER

HO, UYEN T

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/036,445	Applicant(s) MARTIN, ERIC C.	
	Examiner (Jackie) Tan-Uyen T. Ho	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-34 and 49-145 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-34 and 49-81 is/are rejected.
- 7) ☒ Claim(s) 82-145 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/7/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. After a careful reconsideration of this application, the Restriction is withdrawn.
All claims are considered.

Response to Arguments

2. Applicant's arguments filed 2/28/05 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13-34, 49-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid (6,149,682). Frid disclose a bifurcated endoprosthesis having a main portion with tapered end, a side opening and a side limb attached to the side opening. Although, Frid fails to disclose the endoprosthesis including a stent cover by a graft and the sized as claimed, it is well known in the art to have a bifurcated endoprosthesis as disclosed by Frid including a stent and a graft. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the endoprosthesis of Frid from a well known material arts such that the endoprosthesis including a graft for cover the treated site and a stent for support or

anchor the graft into place. Doing so would meet the structure limitation of the bifurcated stent as claimed.

In regarding to the size of the bifurcated stent as claimed, it well known in the art that arteries are range from small size for small patient to big size for bigger patient and the size range as claimed within the range of well known size arteries. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the endoprosthesis at the sized as claimed in order to accommodate the size of arteries for a certain patient. Doing so would meet the structure and functional limitations of the claims since introductory statement of intended use and all other functional statements are deemed not to impose any structural limitations on the claims distinguishable over the Frid's device which is capable of being used as claimed if one desires to do so.

In regarding to the attachment configuration of the stent for the side limb and the main stent, it is well known in the art to have the branch stent attached to the main stent via attachment configuration as claimed or the attachment configuration between the stent and the graft as claimed are well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the stent to the graft using the conventional attachment configuration in order to provide an endoprosthesis that can seal off and support the aneurysm as disclosed by Frid.

Allowable Subject Matter

4. Claims 82-145 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731

August 18, 2005